*HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.25162 of 2006

% 3-1-2007

Sri Itamseti Surya Bhaskara Rao .. Petitioner

And

$ Election Tribunal under A.P.Panchayat Raj Act-cum-Junior Civil Judge, Prathipadu, East Godavari District and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri M.V. Durga Prasad

^ Counsel for respondent No.2 : Sri N.Siva Reddy

?CASES REFERRED :

2004(3) ALD 616

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.25162 of 2006

Date : 3-1-2007

Between :

Sri Itamseti Surya Bhaskara Rao .. Petitioner

And

Election Tribunal under A.P.Panchayat Raj Act-cum-Junior Civil Judge, Prathipadu, East Godavari District and others .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.25162 of 2006

ORDER:

1. This Court ordered rule nisi on 4-12-2006 and Sri N.Siva Reddy had taken notice on behalf of 2nd respondent and requested time to file counter affidavit. In view of the facts and circumstances interim suspension was granted for a limited period and the same had been extended for further limited period.

2. The Writ Petition is filed for a writ of certiorari calling for records pertaining to proceedings of the 1st respondent dated 27-11-2006 in I.A.No.536/2006 in Election O.P.No.2/2006 and to quash the same as illegal, contrary to law and vitiated by the jurisdictional errors and violative of principles of natural justice and to pass such

other suitable orders.

3. The impugned order no doubt is an elaborate order. Documents Exs.A-1 to A-18 were marked.

4. It is stated that the petitioner contested as Sarpanch of Rowthupudi Gram Panchayat, Rowthupudi Mandal, East Godavari District in the elections conducted on 29-7-2006 and he was declared elected Sarpanch by the 3rd respondent on 29-7-2006 itself. Out of the total number of 5084 votes polled, the petitioner secured 2337 valid votes and the 2nd respondent secured 2306 valid votes and the 7th respondent secured 236 votes and 205 votes had been declared as invalid. After making necessary entries in Form 17, the petitioner was declared elected by a majority of 31 votes as there were no claims or objections from any one. It is further stated that after the declaration of the election, the 2nd respondent started agitating for recount and submitted an application to the 3rd respondent seeking recounting on the pretext that certain irregularities had taken place in identifying the election symbol of the concerned contestants which was rejected by the 3rd respondent as not valid in view of Rule 35(3) of A.P. Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules,

1994 framed under G.O.Ms.No.755, PR&RD and Relief (MDL-I) Department, dated 30-11-1994 (hereinafter in short referred to as "Rules" for the purpose of convenience) and thereafter the 2nd respondent created a scene and gave further representations to respondents 4 to 6. It is also stated that the 2nd respondent filed Election O.P.No.2/2006 before the 1st respondent questioning the action suppressing all material facts including his representations to the respondents/authorities and the contents therein and also the order dated 21-7-2006 of the 3rd respondent. The 2nd respondent filed I.A.No.536/2006 for recounting of votes without even completion of pleadings and without even commencement of trial and the said application was straight away allowed by the 1st respondent by the impugned order dated 27-11-2006. Specific stand is taken that allowing the I.A. for recounting of votes without completion of pleadings by the parties and also without any trial in the Election Petition cannot be sustained. It is also stated that the secrecy in election to be protected and ballot boxes cannot be opened except on appropriate pleadings with material particulars and evidence recorded during trial and unless the Election Tribunal is prima facie

satisfied after evidence that in order to decide the dispute and to do complete justice between the parties there is no other way except to reopen the ballot boxes, the same normally not to be permitted. Further specific ground is taken that the 1st respondent misconstrued the provisions of Rules 32, 34(7) and 35 of the Rules.

5. In the counter affidavit filed by the 2nd respondent it is stated that the 2nd respondent submitted an application immediately after the counting to the 3rd respondent for recounting and the 3rd respondent having received the same had given an acknowledgement to the 2nd respondent and in spite of specific objection to the counting and requesting for recounting the 3rd respondent with a mala fide intention for extraneous reasons refused to recount the votes and finally declared the writ petitioner as elected. A further stand is taken that even prior to the declaration the 3rd respondent received the application of the 2nd respondent for recounting by giving acknowledgement and refused to do so for various extraneous reasons and declared the election of the writ petitioner. It is also averred in para-4 of the counter affidavit that it is a fact that the villagers also even after declaration started agitation for recount as every voter in the village suspected foul play in the counting in the

counting. It is also stated that the villagers voluntarily came forward and ventilated their grievance by submitting representations to the respondents 4 to 6 seeking recounting of the votes. It is also stated that it is pertinent to note that the 2nd respondent filed Election O.P. but there is no truth in the allegation that the 2nd respondent suppressed the material facts. It is stated that the parties had filed affidavits and counter affidavits in the I.A. and documents were marked and both parties had not chosen to examine any witness and hence it is not correct to say that the pleadings in the I.A. are not complete. It is also stated that the Election Tribunal having considered the respective contentions of both the parties and also having considered the documentary evidence available on record was pleased to make an order for recounting. Further it is stated that reasons in detail had been recorded and hence the impugned order does not suffer from any illegality. The other averments made in the affidavit filed in support of the Writ Petition also had been specifically denied in para-6 of the counter affidavit filed by the 2nd respondent.

6. Reliance was placed on **Lagudu Anuradha Vs. Gorrepotu Chellayyamma and others (2004(3) ALD 616)** wherein this Court at paras 5 and 6 observed :

"Settlement of Issues or framing Points for consideration is an essential step in an enquiry of election petition for the reason that parties should know on what questions in controversy necessary evidence may have to be let in. Recounting also may be one such Issue or Point in controversy and the Election Tribunal no doubt may pass an order, but only when it had settled all the Issues or Points for consideration and recorded evidence but not otherwise, especially while making such an order in the main Election O.P. itself. Order 14, Rule 1 of the Code of Civil Procedure reads :

> "Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other."

Likewise, Order 14, Rule 2 of the Code of Civil Procedure specifies :

> "Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence."

It is pertinent to note that Order 14, Rule 2 of the Code of Civil Procedure also is made applicable to Election Tribunals. Strong reliance was placed on *Bijoyshree Vs. Madhusudan, AIR 1986 Orissa 105 and Madhu Vs. Bhanwari, 2003 AIHC 4064.*

The Election Tribunal may decide all the issues or questions in controversy or may choose to decide a preliminary question, whether it is a question relating to recounting or otherwise,

depending upon the facts and circumstances of a given case and after recording reasons relating thereto. The underlying principle relating to the settlement of issues specified in Order 14 of the Code of Civil Procedure definitely is applicable even in the case of Election Tribunals. Apart from this aspect of the matter, the violation of circulars or guidelines had not been specifically pleaded, but however placing reliance on oral evidence and certain circumstances recounting was ordered by the Election Tribunal. The procedure adopted by the Election Tribunal in making the impugned order in Municipality considered opinion is wholly unsustainable. It is pertinent to note that the impugned order was not made in an interlocutory application moved in this regard, but in the main Election O.P. itself. Hence, viewed from any angle, the impugned order cannot be sustained."

7. It is no doubt true that the decision referred to supra was delivered in relation to an order of recounting of votes made in the main Election Petition without settling the Issues and without recording evidence. In the present case, on an interlocutory application filed under Section 151 of the Code of Civil Procedure for ordering the recounting of votes, certain documents were marked and elaborate reasons had been recorded and ultimately the application was allowed. Whatever the reasons which had been given by the concerned Election Tribunal-Junior

Civil Judge, Prathipadu, this Court is of the considered opinion that it would be just and proper to give opportunity to both parties to let in evidence and make appropriate orders at the appropriate stage. Hence, the impugned order is hereby set aside and the matter is remitted to the learned Junior Civil Judge, Prathipadu-Elention Tribunal to give opportunity to both the parties to let in evidence in O.P.No.2/2006 and pass appropriate orders in this regard. It is needless to say that such Election O.Ps. are to be disposed of at an early date. Hence, the Election Tribunal-Junior Civil Judge, Prathipadu, East Godavari District to make an endeavour to dispose of the main O.P. itself within a period of three months from the date of receipt of a copy of this order.

8. Accordingly, with the above directions, the Writ Petition is allowed to the extent indicated above. No costs.

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Justice P.S.Narayana

Date : 3-1-2007

Note : Furnish copy in a week.
L.R. copy to be marked : YES / NO

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